BAIL SLIP

The appellants/accused no.1 and 2 viz.,Ramu(A1) and Seenu alias Govindan(A2) were directed to be released on bail as per the order of this Court dated 25.4.2000 and made in Crl.MP.No.1673 of 2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11-8-2005

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR

AND

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.259 of 2000

1. Ramu
2. Seenu @ Govindan .. Appellants /Accused Nos.1 and 2

vs

State rep. by
Inspector of Police
Kannankurichi Police Station
(Crime No.864/96) .. Respondent /Complainant

Criminal appeal filed under Sec.374 of the Code of Criminal Procedure against the judgment of the I Additional Sessions Judge-cum-Chief Judicial Magistrate, Salem, in S.C.No.289/98 dated 21.1.2000.

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For Appellants : Mr.G.Karthikeyan
For Respondent : Mr.V.M.R.Rajendran
Additional Public
Prosecutor

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

The appellants two in number, who stood charged, tried and found guilty under Sec.302 read with 34 of I.P.C. and awarded life imprisonment along with fine by the Sessions Division, Salem, have brought forth this appeal.

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2. The short facts necessary for the disposal of this appeal can be stated as follows:

(a) P.W.1 is the brother of the deceased Saravanan. P.W.1 was residing at Chennakollapatty. The deceased along with his family members was living at Chettichavadi Manthope. P.W.10 is the wife of the deceased. A month prior to the date of occurrence, there was a quarrel between A-1 and A-2 on the one side and the deceased on the other, since the deceased was calling the first accused "Nollaikannan". At that time, P.W.1 intervened and pacified them. On 16.8.1996, the deceased left at about 8.00 P.M., from his house to go on a tour, which was arranged by P.W.6. At about 9.00 P.M., P.W.3 witnessed a quarrel between the deceased and A-1 and A-2. She interfered and pacified the situation, and thereafter, A-1 and A-2 left the place. At about 10.00 P.M., when P.Ws.4 and 5 were just returning from Vinayagampatty after purchasing grocery, they found A-1 and A-2 and the deceased quarrelling with each other. At that time, A-1 strangulated the deceased, while A-2 fisted him on his face. P.Ws.4 and 5, after witnessing the occurrence, went away from the place. P.W.2, who came by the side of the scene of occurrence at about 6.30 A.M. the next day, found the dead body of the deceased and informed to P.W.1, who also immediately went to the scene of occurrence and verified the same. At about 10.00 A.M. on 17.8.1996, P.Ws.4 and 5 informed P.W.1 about the incident that occurred at about 10.00 P.M. the previous day. Immediately, P.W.1 proceeded to Kannankurichi Police Station, where P.W.13 the Sub Inspector of Police, was on duty. He gave a report Ex.P1 to P.W.13, on the strength of which a case came to be registered in Crime No.864/96 under Sections 341 and 302 of I.P.C. Printed First Information Report Ex.P10, was despatched to Court.

(b) On receipt of a copy of the First Information Report, P.W.14 the Inspector of Police, took up investigation in the case, proceeded to the spot, made an inspection in the presence of witnesses and prepared Ex.P4 the observation mahazar, and Ex.P11 the rough sketch. The place of occurrence and the dead body were caused to be photographed through P.W.11 a Photographer, and the photographs and its negatives were marked as M.Os.6 and 7 series respectively. Then, he conducted inquest on the dead body in the presence of panchayatdars and witnesses and prepared Ex.P12 the inquest report.

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(c) Pursuant to the requisition forwarded by the Investigating Officer through a Police Constable, the dead body of Saravanan was subjected to autopsy by P.W.7 the Police Surgeon and Professor of Forensic Medicine, Government M.K. Medical College, Salem, and he found the following injuries.

"1. A contusion on left upper eye, 3 cms x 1 cm x 0.5 cm.
2. A contusion on the left side of lower lib, 1 cm x 0.5 cms. x 0.5 cm.
3. A contusion on the left temporal region of scalp, 4 cms. x 1 cm. x 0.5 cm.
4. A contusion on the left frontal region of scalp, 2 cms. x 1 cm. x 0.5 cm.
5. A contusion on right temporal region of scalp, 3.5 cms. x 0.5 cms. x 0.5 cm.

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6. An irregular abrasion over right cheek, 1 cm x 0.5 cm.
7. An irregular abrasion over right side of neck, 4 cms. x 2 cm.
8. Cresentic abrasion over right side of neck, on its upper part, 2 cms. x 1 cm. x 0.5 cm.
9. An irregular abrasion over the middle of right side of neck, 2 cms. x 1 cm.

10. An irregular abrasion over upper part of left side of neck, 3 cms. x 1 cm.
11. Three cresentic abrasions over left side of neck, 0.5 cms. x 0.5 cm in each.
12. An irregular abrasion over upper and outer aspect of left arm, 4 cms. x 1 cm. - Dark brown in colour.
13. A contusion on right side of neck, 3 cms. x 1 cm. x 0.5 cm. and left side of neck, 2 cms. x 1 cm. x 0.5 cm and 1 cm x 0.5 cm. x 0.5 cm.
14. Fracture of hyoid bone present.
15. Fracture of thyroid cartilage present."

The Doctor issued Ex.P3 the postmortem certificate, with his opinion that the deceased would appear to have died of asphyxia due to throttling.

(d) P.W.14 the Investigating Officer, recovered M.O.1 shirt, and M.O.2 banian, from the house of the deceased under a mahazar Ex.P5. Then, he proceeded to Sambu Odai Bridge at about 5.00 P.M. that day, where he prepared an observation mahazar Ex.P6. Photographs were taken through the photographer P.W.11, and the photos and the negatives were marked as M.Os.8 and 9 respectively. During investigation, the Investigating Officer arrested both the accused at 6.00 A.M. on 19.8.1996. The second accused gave a confessional statement, which was recorded by the Investigating Officer in the presence of two witnesses. The admissible part was marked as Ex.P8. Consequent upon the same, the second accused produced M.O.4 shirt, which was recovered in the presence of the same witnesses under Ex.P9 the mahazar. On completion of investigation, the final report was filed against the accused.

3. In order to substantiate the charge levelled against the appellants/accused, the prosecution examined 14 witnesses and marked 13 exhibits and 11 material objects. On completion of the evidence on the side of the prosecution, both the accused were questioned under Sec.313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses. They flatly denied them as false. No defence witnesses were examined. The trial Court, after hearing the arguments advanced by both sides and scrutiny of the materials, found both the accused guilty as per the charge and awarded life imprisonment, which is the subject matter of appeal before this Court.

4. Learned Counsel Mr.G.Karthikeyan, appearing for the appellants inter alia made the following submissions:

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(i) The prosecution relied on the evidence of P.Ws.4 and 5 as direct evidence to the case. A reading of the evidence of P.Ws.4 and 5 would indicate that it is thoroughly artificial and hence unreliable.

(ii) The medical evidence did not support the prosecution case, since as per the postmortem certificate, alcohol contents were found in the body of the deceased.

(iii) P.W.1 had also shifted the dead body from the place of occurrence which would go against the prosecution case.

5. Added further, the learned Counsel that even assuming that the facts of the prosecution case are proved that it was the first accused who throttled him and the second accused fisted him, the said acts would not attract the penal provisions of murder; that there is sufficient evidence to show that the parties were quarrelling with each other, and it was the deceased, who called A-1 as "Nollaikannan", and pursuant to the same, a quarrel ensued between the parties; that this type of quarrel had arisen not only in the past, but also at the time of occurrence; that the evidence of P.Ws.4 and 5 would clearly indicate that they were quarrelling, as a result of which, in the heat of passion, the accused have acted, and thus, it was neither planned nor premeditated, and under the circumstances, the act of the accused would fall within the provisions of Exception 4 to Sec.300 of I.P.C., and hence, the same has also to be considered by this Court.

6. This Court heard the learned Additional Public Prosecutor on the above contentions.

7. It is not a fact in controversy that one Saravanan the brother of P.W.1, died out of homicidal violence. The dead body pursuant to the inquest conducted by the Investigating Officer, was subjected to postmortem by P.W.7 the Doctor, who gave Ex.P3 the postmortem certificate, wherein it is found that the deceased died out of asphyxia due to throttling. The fact that he died out of homicidal violence is not disputed by the appellants/accused either before the trial Court or before this Court. Therefore, it can be safely concluded so.

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8. In order to establish the fact that at the time of the occurrence, the first accused throttled the deceased at his neck, and the second accused fisted him, the prosecution had marched P.Ws.4 and 5. According to their evidence, they had purchased grocery at Vinayagampatty and proceeded to their village, and at that time, they saw the incident. The very narration of the incident as spoken to by P.Ws.4 and 5, would clearly show that their evidence is cogent and also natural. No one circumstance or reason has been brought forth either before the trial Court or before this Court casting any doubt on their evidence. That apart, their ocular testimony stood corroborated by the medical evidence adduced by the prosecution through P.W.7 the Doctor, and the postmortem certificate Ex.P3, issued by him. The postmortem certificate would clearly

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reveal that he died out of asphyxia caused by throttling. Thus, the lower Court was perfectly correct in recording a finding that by the act of the appellants/accused, he died at the time of the occurrence.

9. The learned Counsel for the appellants would submit that there was a delay in reporting the matter to the police. It is true that the occurrence had taken place at 10.00 P.M., and P.Ws.4 and 5 have witnessed the same. From their evidence, it could be seen that they tried to pacify the situation; but, they could not, and when on the next morning, they came to know about the death of the deceased, they thought it fit to inform to his brother P.W.1, about the incident on the previous night, and that only thereafter, P.W.1 has given the complaint. Under the circumstances, it can be well stated that the said delay had occasioned in the natural course of events. Hence, no weight could be attached to the said contention. In the instant case, the prosecution has brought forth sufficient evidence to prove the act of the accused.

10. Coming to the nature of the act committed by the accused, the Court has to necessarily agree with the learned Counsel for the appellants. In the instant case, a few months prior to the occurrence, the deceased has called A-1 as "Nollaikannan", and therefore, a quarrel arose between them, and P.W.1 has pacified them. It is seen from the evidence that even on the date of incident, when a quarrel arose between A-1 and A-2 on the one side and the deceased on the other, P.W.3 intervened to pacify the situation. Apart from that, P.Ws.4 and 5, who, according to the prosecution, were eyewitnesses, have spoken to the fact that there was a quarrel between the parties on the date of incident, and at that time, they also intervened to pacify them; but, they could not. Thus, from the evidence, it would be clear that A-1 was called as "Nollaikannan" by the deceased, and that the deceased did not stop the same, despite the advise prevailed even at the time of the occurrence also. In the instant case, pursuant to the quarrel and in the heat of passion, the accused have suddenly acted, and they have committed the offence. Under the circumstances, neither there was any premeditation, nor any planned act has been done by the appellants/accused. This Court is of the opinion that the appellants/accused cannot be attributed with the act of murder; but, at the same time, the act of the accused would come under Exception 4 to Sec.300 of I.P.C. Thus, they can be convicted under Sec.304 (Part II) of I.P.C., and awarding a punishment of 5 years Rigorous Imprisonment would meet the ends of justice.

11. Accordingly, the judgment of the lower Court finding the appellants/accused guilty under Sec.302 read with 34 of I.P.C. and imposing the sentence referred to above, is set aside, and in its place, the appellants/accused are found guilty under Sec.304 (Part II) of I.P.C. and are directed to undergo 5 years Rigorous Imprisonment for the said offence.

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12. In the result, with the above modification in conviction and sentence, this criminal appeal is dismissed. It is reported

that the appellants are on bail. Hence, the Sessions Judge shall take steps to commit them to prison to undergo the remaining period of sentence imposed upon them.

nsv/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:
1) The I Additional Sessions Judge cum Chief Judicial Magistrate, Salem.
2)The I Additional Sessions Judge cum Chief Judicial Magistrate,Salem,
Through The Principal Sessions Judge, Salem.
3)The District Collector, Salem.
4)The Director General of Police, Chennai.
5)The Public Prosecutor, Madras.
6)The Superintendent, Central Prison, Coimbatore.
7)The Inspector of Police, Kannankurichi Police Station, Salem District.
8. The Judicial Magistrate, No.IV, Salem.
9. -do-Thro The Chief Judicial Magistrate, Salem.

JRG(C.O)
BG/18.08.2005.

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